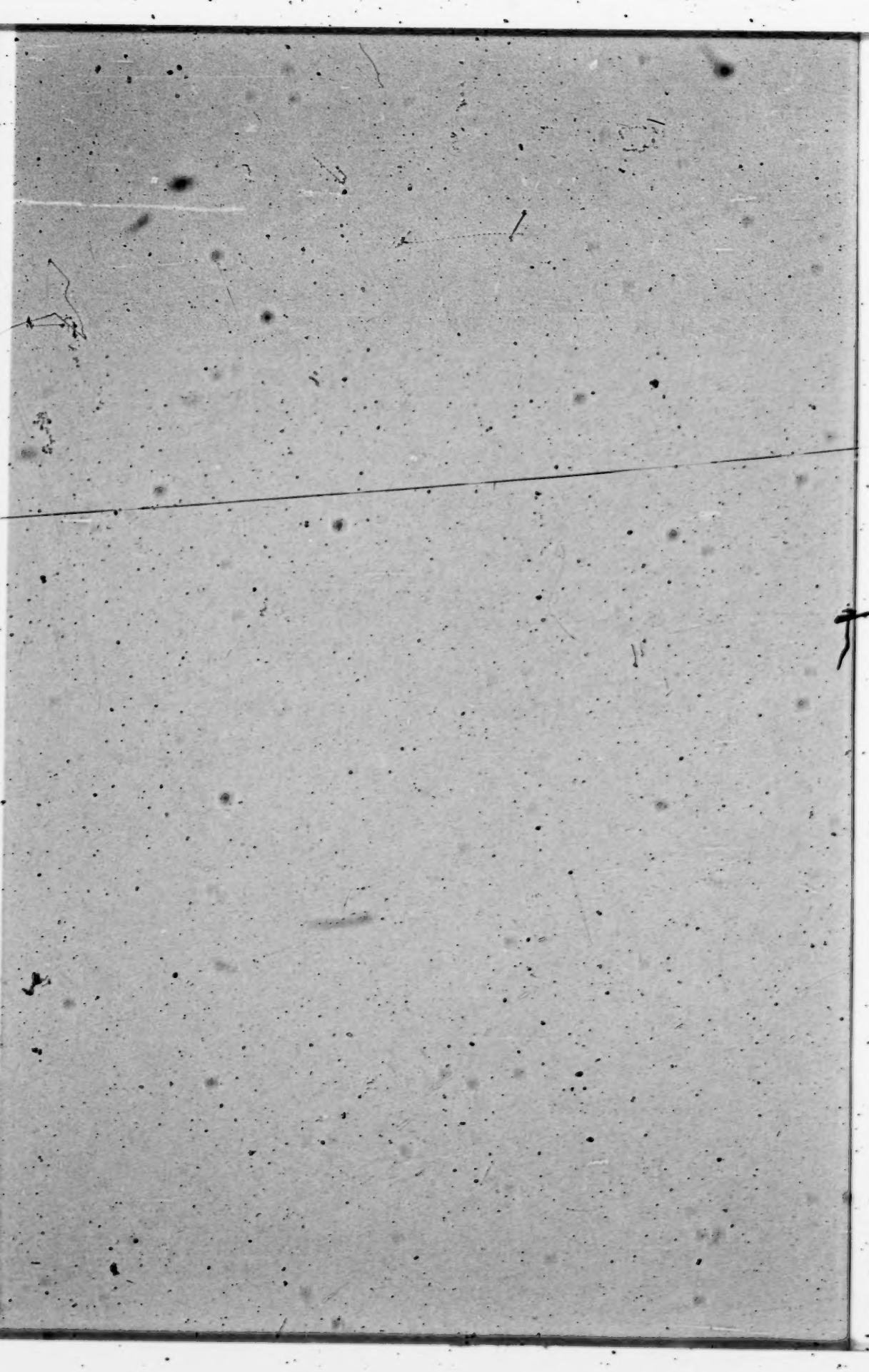

24 Ill. Rev. Stat. (1969) §8-11-2:

§8-11-2. *Taxation of occupations or privileges*

The corporate authorities of any municipality may tax any or all of the following occupations or privileges:

1. Persons engaged in the business of transmitting messages by means of electricity, at a rate not to exceed 5% of the gross receipts from such business originating within the corporate limits of the municipality.

2. Persons engaged in the business of distributing, supplying, furnishing, or selling gas for use or consumption within the corporate limits of the municipality, and not for resale, at a rate not to exceed 5% of the gross receipts therefrom.

3. Persons engaged in the business of distributing, supplying, furnishing, or selling electricity for use or consumption within the corporate limits of the municipality, and not for resale, at a rate not to exceed 5% of the gross receipts therefrom.

4. Persons engaged in the business of distributing, supplying, furnishing, or selling water for use or consumption within the corporate limits of the municipality, and not for resale, at a rate not to exceed 5% of the gross receipts therefrom.

None of the taxes authorized by this Section may be imposed with respect to any transaction in interstate commerce or otherwise to the extent to which such business may not, under the constitution and statutes of the United States, be made the subject of taxation by this State or any political sub-division thereof; nor shall any persons engaged in the business of distributing, supplying, furnishing or selling gas, water or electricity, or engaged in the business of transmitting messages be subject to taxation under the provisions of this section for such transactions as are or may become subject to taxation under the provisions of

the "Municipal Retailers' Occupation Tax Act" authorized by Section 8-11-1; nor shall any tax authorized by this section be imposed upon any person engaged in a business unless such tax is imposed in like manner and at the same rate upon all persons engaged in businesses of the same class in the municipality, whether privately or municipally owned or operated.

Any of the taxes enumerated in this section may be in addition to the payment of money, or value of products or services furnished to the municipality by the taxpayer as compensation for the use of its streets, alleys, or other public places, or installation and maintenance therein, thereon or thereunder of poles, wires, pipes or other equipment used in the operation of the taxpayer's business.

For the purpose of the taxes enumerated in this section:

"Gross receipts" means the consideration received for the transmission of messages, the consideration received for distributing, supplying, furnishing or selling gas for use or consumption and not for resale, and the consideration received for distributing, supplying, furnishing or selling electricity for use or consumption and not for resale, and the consideration received for distributing, supplying, furnishing or selling water for use or consumption and not for resale, and for all services rendered in connection therewith valued in money, whether received in money or otherwise, including cash, credit, services and property of every kind and material and for all services rendered therewith, and shall be determined without any deduction on account of the cost of transmitting such messages, without any deduction on account of the cost of the service, product or commodity supplied, the cost of materials used, labor or service cost, or any other expenses whatsoever.

The words "transmitting messages", in addition to the usual and popular meaning of person to person communication, shall include the furnishing, for a consideration, of

services or facilities (whether owned or leased), or both, to persons in connection with the transmission of messages where such persons do not, in turn, receive any consideration in connection therewith, but shall not include such furnishing of services or facilities to persons for the transmission of messages to the extent that any such services or facilities for the transmission of messages are furnished for a consideration, by such persons to other persons, for the transmission of messages.

"Person" as used in this section means any natural individual, firm, trust, estate, partnership, association, joint stock company, joint adventure, corporation, municipal corporation or political subdivision of this State, or a receiver, trustee, conservator or other representative appointed by order of any court.

Illinois Messages Tax Act, 120 Ill. Rev. Stat. (1969) §§467.1-467.2:

§467.1 *Definitions*

For the purposes of this Act:

"Gross receipts" means the consideration received for the transmission of messages and for all services rendered in connection therewith, valued in money, whether received in money or otherwise, including cash, credits, services and property of every kind or nature, and shall be determined without any deduction on account of the cost of transmitting such messages, the cost of materials used, labor or service costs or any other expense whatsoever. However, any charges added to customers' bills pursuant to the provisions of paragraph (b) of Section 36 of "An Act concerning public utilities", approved June 29, 1921, as amended, or any charges added to customers' bills by taxpayers who are not subject to rate regulation by the Illinois Commerce Commission because of the tax that is imposed by this Act on any such taxpayer, shall be excluded in determining such

gross receipts. In case credit is extended, the amount thereof shall be included only as and when payments are received.

The words, "transmitting messages," in addition to the usual and popular meaning, include the furnishing, for a consideration, of services or facilities (whether owned or leased), or both, to persons in connection with the transmission of messages where such persons do not, in turn, receive any consideration in connection therewith, but do not include such furnishing of services or facilities to persons for the transmission of messages to the extent that any such services or facilities for the transmission of messages are furnished for a consideration, by such persons to other persons, for the transmission of messages.

"Department" means the Department of Revenue of the State of Illinois.

"Director" means the Director of Revenue for the Department of Revenue of the State of Illinois.

"Taxpayer" means a person engaged in the business of transmitting messages.

"Person" means any natural individual, firm, trust, estate, partnership, association, joint stock company, joint adventure, corporation, or a receiver, trustee, conservator or other representative appointed by order of any court, or any city, town, county or other political subdivision of this State.

§467.2 *Rate of tax—Interstate business exempt*

A tax is imposed upon persons engaged in the business of transmitting messages in this State at the rate of 5% of the gross receipts from such business, provided that any change in rate imposed by this amendatory Act of 1967 shall become effective only with bills having a date on or after August 1, 1967. However, such tax is not imposed

upon the privilege of engaging in any business in interstate commerce or otherwise to the extent to which such business may not, under the Constitution and statutes of the United States, be made the subject of taxation by this State.

111-2/3 Ill. Rev. Stat. (1969) §§36, 36(a), 36(b):

§36. *Change of rates—Notice—Suspension of rates—Temporary schedule—Charge for taxes*

* * * *

(a) Whenever a municipality pursuant to Section 8-11-2 of the Illinois Municipal Code, as heretofore and hereafter amended, imposes a tax on any public utility, such utility may charge its customers, in addition to any rate authorized by this Act, an additional charge equal to the sum of (1) an amount equal to such municipal tax, or any part thereof, (2) 3% of such tax, or any part thereof, as the case may be, to cover costs of accounting, and (3) an amount equal to the increase in taxes and other payments to governmental bodies resulting from the amount of such additional charge. Such utility shall file with the Commission a true and correct copy of the municipal ordinance imposing such tax; and also shall file with the Commission a supplemental schedule applicable to such municipality which shall specify such additional charge and which shall become effective upon filing without further notice. Such additional charge shall be made by the addition of a uniform percentage to the amounts payable for intrastate utility service in such municipality and shall be shown separately on the utility bill to each customer. The Commission shall have power to investigate whether or not such supplemental schedule correctly specifies such additional charge, but shall have no power to suspend such supplemental schedule. If the Commission finds, after a hearing, that such supplemental schedule does not correctly specify such additional charge, it shall by order require a refund to the appropriate customers of the excess, if any, with interest, in such man-

ner as it shall deem just and reasonable, and in and by such order shall require the utility to file an amended supplemental schedule corresponding to the finding and order of the Commission.

(b) Whenever the tax that is imposed upon a public utility engaged in the business of transmitting messages pursuant to Section 2 of The Messages Tax Act, or whenever the tax that is imposed upon a public utility engaged in the business of distributing, supplying, furnishing or selling gas for use or consumption pursuant to Section 2 of The Gas Revenue Tax Act, or whenever the tax that is imposed upon a public utility engaged in the business of distributing, supplying, furnishing or selling electricity for use or consumption pursuant to Section 2 of The Public Utilities Revenue Act, shall exceed the rate of 3% of the gross receipts, as defined in said Acts, respectively, from any such business, such utility may charge its customers, in addition to any rate authorized by this Act, an additional charge equal to the amount by which such tax exceeds 3%. Such utility shall file with the Commission a supplemental schedule which shall specify such additional charge and which shall become effective upon filing without further notice. Such additional charge shall be made by the addition of a uniform percentage to the amounts payable for intrastate utility service. The Commission shall have the power to investigate whether or not such supplemental schedule correctly specifies such additional charge, but shall have no power to suspend such supplemental schedule. If the Commission finds, after a hearing, that such supplemental schedule does not correctly specify such additional charge, it shall by order require a refund to the appropriate customers of the excess, if any, with interest, in such manner as it shall deem just and reasonable, and in and by such order shall require the utility to file an amended supplemental schedule corresponding to the finding and order of the Commission.

Internal Revenue Service Rulings

TREASURY DEPARTMENT.
Washington 25.

Aug. 2, 1948

American Telephone and Telegraph Company
195 Broadway
New York 7, New York

Attention: Mr. Martin J. Karl

Gentlemen:

Reference is made to your letter of December 10, 1947, submitting on behalf of the Pacific Telephone and Telegraph Company and its exchange service customers in various municipalities in the State of Washington the following questions for Bureau rulings:

> "(1) Whether amounts billed to customers of telephone service in municipalities in the State of Washington which represent taxes paid to such municipalities by the company and which, pursuant to an order of the Department, are passed on to the customers on a pro rata basis; constitute amounts paid for telephone services and facilities subject to the taxes imposed by section 3465 of the Internal Revenue Code?
>
> "(2) Whether such amounts are deductible by customers for income tax purposes under section 23(c)(3) of the Internal Revenue Code and Sec. 29.23(c)-1(b) of Regulations 111 where they are paid otherwise than in connection with the customers' trade or business?"

It is stated that the above questions arise by reason of an order issued on October 9, 1947, by the Department of Public Utilities of Washington authorizing the Pacific Telephone and Telegraph Company to bill on a pro rata

basis, to its customers in various municipalities in Washington, municipal occupation, business, excise and use of streets taxes imposed by such municipalities under the provisions of municipal ordinances.

Your letter enclosed copies of ordinances of the cities of Seattle, Spokane and Tacoma, relating to, and providing for, a license fee or tax upon certain businesses, occupations, pursuits and privileges, a copy of the Department's order describing the history of proceedings before the Department, the Superior Court of Thurston County in Washington, and the Supreme Court of the State of Washington prior to the order and setting forth the Department's findings and orders, and a photostatic copy of the portion of the Supreme Court's decision which relates to the passing on to customers, of payments to municipalities.

The evidence discloses that the taxes are levied upon the telephone company and represent payments which the company is required to make to the various municipalities in connection with its operations therein. Some of the taxes are based on gross receipts while others are specified annual and daily amounts. The taxes are universally considered proper items of operation expense, to be so considered by State rate-making authorities. The Department has the power to fix the special exchange rate applicable to the different municipalities, which will in effect require the rate payers in each municipality to absorb on a pro rata basis a sum equal to the amount of the tax the telephone company is required to pay such municipality.

Answering question No. (1), inasmuch as the payments which the telephone company must make to the various municipalities in connection with its operations therein, are considered proper items of operation expense, it is held that the pro rata shares of such payments the ratepayers are required to absorb, which are billed by the company

to its customers, constitute charges for telephone services and facilities subject to the tax imposed by section 3465 of the Code, as amended.

The answer to question No. (2) will be made the subject of a separate communication.

Very truly yours,

/s/

Commissioner.

U. S. TREASURY DEPARTMENT
Office of Chief Counsel, Internal Revenue Service,
Washington, D. C. 23224.

Date March 15, 1968

In reply refer to:
CC:CL-3767/O:RJS

Mr. Victor E. Ferrall
General Tax Attorney
American Telephone and
Telegraph Company
195 Broadway
New York, N. Y. 10007

Re: Agron v. Illinois Bell Telephone Co.

and

American Telephone and Telegraph Company
U. S. D. C. Illinois, # 67C-2041
Your ref: C

Dear Mr. Ferrall:

This refers to your December 12, 1967 letter addressed to the Commissioner, the receipt of which has heretofore been acknowledged by this office. Attached to your cor-

respondence was a copy of a complaint filed recently in the United States District Court for Illinois against Illinois Bell Telephone Company, wherein the plaintiff, a subscriber, seeks a declaratory judgment respecting the determination of the Federal Communication Excise Tax charged and collected by that company. Also attached was a copy of a letter ruling dated August 2, 1948, which this Agency issued to American Telephone and Telegraph Company.

In response to your inquiry, you are advised that the current position of the Internal Revenue Service regarding the tax imposed by section 4251 of the Internal Revenue Code of 1954, is still represented by the aforementioned ruling, namely, that the payments which the telephone company must make to various municipalities in connection with its operations therein, are considered proper items of operation expense and therefore the pro rata shares of such payments billed by the company, which the ratepayers are required to absorb, constitute charges for telephone service subject to the Federal tax on communication services and facilities.

No decision has yet been reached with respect to the question of participation by the United States in the instant lawsuit. In this connection we acknowledge receipt of your letter of February 1, 1968, with which you forwarded a copy of the answer and third-party complaint filed in the above-entitled case. The matter is under consideration and we will let you know when any determination has been made with respect thereto.

Very truly yours,

/s/ Lester R. Uretz,
Lester R. Uretz,
Chief Counsel.

REV. RUL. 69-151,
1969-13 INTERNAL REVENUE BULLETIN 16
(March 31, 1969)

Advice has been requested whether certain amounts separately stated on customers' bills from telephone companies may be excluded in determining the amount upon which the Federal communications tax is imposed by Section 4251(a)(1) of the Internal Revenue Code of 1954. These amounts are attributable to State and local taxes (variously categorized as "gross receipts," "occupational," "message," etc., taxes) imposed on the telephone companies but passed on to the customers as separate charges.

Section 4251(a)(1) of the Code imposes a tax on certain communications services, including local telephone service. That section provides that this tax shall be paid by the person paying for the services.

Section 4252(a) of the Code provides that for purposes of the Federal communications tax the term 'local telephone service' means (1) the access to a local telephone system and the privilege of telephonic quality communication with substantially all persons having telephone or radio telephone stations constituting a part of such local telephone system, and (2) any facility or service provided in connection with a service described in (1).

Section 4254(a)(1) of the Code provides, with an exception not here material, that the amount on which the tax with respect to such services shall be based shall be the sum of all charges for such services included in the bill.

Unlike the Federal communications tax, which is imposed on the person paying for the service, the State and local taxes under consideration are imposed on the companies engaged in the business of providing the service. Since these taxes are directly attributable to the telephone

services provided, they constitute an element of the cost of providing the services along with the costs attributable to labor and equipment. The fact that amounts attributable to such taxes are passed on and are separately stated on bills sent to customers does not change the legal incidence of the taxes. Therefore, the practical effect of separately stating amounts attributable to State and local taxes on bills sent to customers is simply to identify an element of the total charges for the telephone services provided to such customers.

Accordingly, it is held that amounts attributable to the State and local taxes referred to above, which are imposed on telephone companies but are passed on to customers and separately stated on customers' bills, may not be excluded in determining the amount upon which the Federal communications tax is imposed by section 4251(a)(1) of the Code.